

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.02.2019

C O R A M

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

CMA.No.2558 of 2018

and

CMP.No19394 of 2018

K.S.A.Sundararajan

... Appellant/Plaintiff

Vs.

1.K.Mohanraj

2.K.Rajkumar

3.K.Kandasamy

... Respondents/Defendants

PRAYER:

Civil Miscellaneous Appeal filed under Order 43.R.1 (r) of C.P.C, to allow this appeal and set aside the judgment and decree passed by the order dated 18.08.2018 in I.A.No.925 of 2017 in O.S.No.242 of 2017 on the file of I Additional District Judge, Salem.

For Appellant : Mr.R.Nalliyappan

For Respondents : M/s.S.Vadivelmurugan [for R1]
M/s.A.P.Srinivas [for R2 & R3]

J U D G M E N T

The plaintiff is the appellant before this Court. The plaintiff filed a suit in OS.No.242 of 2017 for specific performance on the basis of an agreement entered between him and the first respondent. Later, he came to know that the property for which the sale agreement entered is owned and enjoyed by all the respondents. Since all the respondents are colluded together and attempted to defraud the appellant, he filed a petition in I.A.No.925 of 2019 before I Additional District Judge, Salem for interim injunction restraining the respondents from alienating the property. The trial Court after finding that the property is an undivided property that the petitioner has not claimed that the first respondent alone is the owner of the petition

mentioned property and that respondents 2 and 3 have not been included as party in the sale agreement, has dismissed the petition. Aggrieved over the same, the appellant is before this Court.

2. The learned counsel for the appellant would submit that in the written statement filed by the first respondent as well as in the counter affidavit, it is not denied that the first respondent is not the owner of the property. As per the decree passed in OS.No.249 of 2014 on the file of III Additional District Judge Court, Salem, the first respondent became the owner. He also possesses other properties which are not the subject matter of the partition suit. Therefore, he seeks injunction restraining the respondents from alienating the property mentioned in the schedule till the disposal of the suit.

3. The plaintiff, having entered into an agreement of sale with the 1st respondent, he shall plead and prove that the property for which he entered into a sale agreement absolutely belongs to the person who agreed to convey the property. Without enquiring the right title and interest of the vendor, the plaintiff has entered into a sale agreement. In the instant case, the pleadings would go to show that the first respondent is none other than the plaintiff's father-in-law's younger brother. In that event, it is to be noted that the father-in-law is also one of the co-sharer. Be that as it may, the injunction can be granted against anybody, but not against the owner of the property. In this case, the 2nd and 3rd respondents are not parties in the sale agreement and as such they are strangers. Therefore, the injunction cannot be granted against the 2nd and 3rd respondents who are the owners of the properties and who are not parties to the sale agreement. The trial Court has rightly come to the conclusion and negated the request of the appellant for injunction.

4. I do not find any infirmity in the order passed by the trial Court and accordingly confirm the order passed in I.A.No.925 of 2017 dated 18.08.2018. However, the learned counsel for the appellant would submit that there is a likelihood of the respondents alienating the property and in that event, he will be put to irreparable hardship and financial loss.

5. Considering the submissions a direction is issued to the trial Court to complete the trial of the suit as expeditiously as possible preferably within a period of one year.

6. Accordingly, the Civil Miscellaneous Appeal is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

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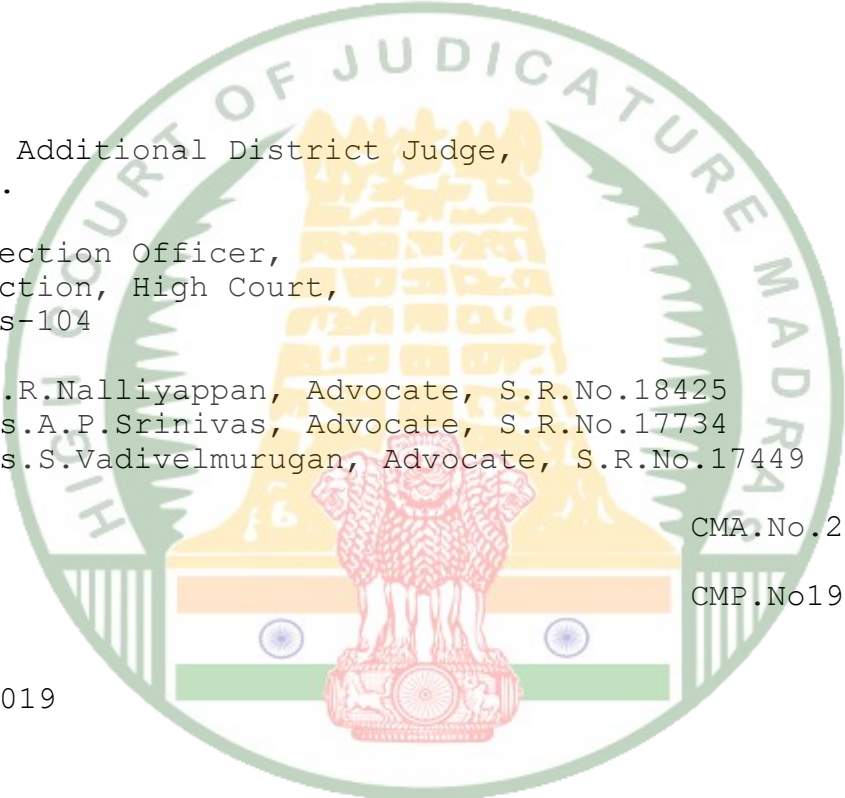
To

1. The I Additional District Judge,
Salem.
2. The Section Officer,
VR Section, High Court,
Madras-104

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.18425
+1cc to M/s.A.P.Srinivas, Advocate, S.R.No.17734
+1cc to M/s.S.Vadivelmurugan, Advocate, S.R.No.17449

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